United Rigging & Hauling *and* Drivers, Chauffeurs, & Helpers Local Union No. 639, a/w International Brotherhood of Teamsters, AFL–CIO.[1] Case 5–CA–22728

March 25, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Drivers, Chauffeurs & Helpers Local Union No. 639, a/w International Brotherhood of Teamsters, AFL–CIO (the Union) on May 15, 1992, the General Counsel of the National Labor Relations Board issued a complaint on June 26, 1992, against United Rigging & Hauling, Inc. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act by unilaterally ceasing to make contractually required contributions to various funds, including but not limited to, a pension fund and a health and welfare fund, and by failing to deduct and remit union dues to the Union on behalf of its employees. The Respondent filed a timely answer, admitting in part and denying in part the allegations in the complaint.

On January 11, 1993, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached, asserting that the Respondent's answer to the complaint raises no genuine issues of fact that require an evidentiary hearing and that summary judgment should be granted. On January 13, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On January 29, 1993, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer to the complaint the Respondent admits that it failed to make the above-described contractually required payments without the Union's consent. The Respondent states that its failure to pay was caused by severe financial distress resulting in the filing of a petition for bankruptcy. In its response to the Notice to Show Cause the Respondent suggests that the Board, in accordance with the provisions of 11 USC Chapter 11, stay all further proceedings and actions against the Respondent.

It is well established that Section 8(a)(5) and (1) and Section 8(d) of the Act prohibit an employer that is a party to an existing collective-bargaining agreement from modifying the terms and conditions of employment established by that agreement without obtaining the consent of the union.[2] Here, the Respondent has admitted that it unilaterally failed and refused to make contractually required payments to various funds, including but not limited to, a pension fund and a health and welfare fund and has failed to deduct and remit union dues to the Union. Accordingly, the Respondent has admitted all the facts material to a resolution of the unfair labor practice issues raised by the complaint. The Respondent's claim that it is financially unable to make the required payments does not constitute an adequate defense to an allegation that an employer has violated Section 8(a)(5) and (1) of the Act by failing to abide by a provision of a collective-bargaining agreement. *Nick Robilotto, Inc.*, 292 NLRB 1279 (1989); *General Split Corp.*, 284 NLRB 418 (1987). It is also well established that the Board's jurisdiction and authority to hear and determine an unfair labor practice case to its final disposition are exempted from the automatic stay provisions of the Bankruptcy Act under the exception of 11 U.S.C. § 362 (b)(4) and (5). See *American Fleet Maintenance Co.*, 289 NLRB 764 (1988); *Phoenix Co.*, 274 NLRB 995 (1985). There being no material facts in dispute, we grant the General Counsel's Motion for Summary Judgment.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Delaware corporation with an office and place of business in Beltsville, Maryland, is engaged in the transportation and installation of heavy equipment. During the 12 months preceding issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business, provided goods and services valued in excess of $50,000 from its Beltsville, Maryland facility directly to points located outside the State of Maryland. The Respondent admits, and we find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit*

Since at least 1980 and at all times material, the Union has been the designated exclusive collective-bargaining representative of a unit of the Respondent's employees as described in successive collective-bargaining agreements and has been recognized as such by the Respondent. The unit is a unit appropriate for

[1] On November 1, 1987, the Teamsters International Union was readmitted to the AFL–CIO. Accordingly, the caption has been amended to reflect that change.

[2] E.g., *Rapid Fur Dressing*, 278 NLRB 905 (1986); *Nestle Co.*, 251 NLRB 1023 (1980); *Pere Marquette Park Lodge*, 237 NLRB 855, 861 (1978).

collective-bargaining purposes within the meaning of Section 9(b) of the Act.[3] Recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period May 23, 1989, to May 22, 1992. The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *The 8(a)(5) and (1) Violations*

Since on or about November 15, 1991, the Respondent has unilaterally ceased to make contractually required contributions to various funds, including but not limited to, a pension fund and a health and welfare fund, and has failed to deduct and remit union dues to the Union. Accordingly, we find that the Respondent has failed and refused to bargain collectively and in good faith with the Union as the representative of its employees, and that the Respondent thereby has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing to abide by and adhere to its collective-bargaining agreement by unilaterally ceasing to make contractually required contributions to various funds, including but not limited to, a pension fund and a health and welfare fund, and by failing to deduct and remit dues to the Union, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make the contractually required contributions to various funds, including but not limited to, the pension fund and the health and welfare fund, and to remit to the Union dues owed for those unit employees who had authorized the Respondent to deduct and remit them to the Union pursuant to the parties' collective-bargaining agreement. In addition, we shall also order the Respondent to make its employees whole for any losses they may have suffered because of its failure to make various fund contributions in accord with *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees and the Union shall include interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), except that any additional amounts due the benefit funds shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, United Rigging & Hauling, Inc., Beltsville, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to abide by and adhere to its collective-bargaining agreement with the Union by unilaterally ceasing to make contractually required contributions to various funds, including but not limited to, a pension fund and a health and welfare fund, and by failing to deduct and remit union dues to the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole unit employees for any loss of benefits, including making required payments to contractual benefits plans, in the manner set forth in the remedy section of this Decision and Order.

(b) Remit to the Union dues owed for those unit employees who have authorized the Respondent to deduct and remit them to the Union pursuant to the parties' collective-bargaining agreement, in the manner set forth in the remedy section of this Decision and Order.

(c) Post at its facility in Beltsville, Maryland, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] The Respondent in its answer denied that the unit as described in the complaint was appropriate. The Respondent admitted, however, that it is a party to a collective-bargaining agreement with the Union, and it is undisputed that this agreement contains a provision describing the unit. Further, the Respondent did not contend in its response to the Notice to Show Cause that the unit as alleged was inappropriate or that the General Counsel's motion should be denied because of alleged inappropriateness of the unit. Under these circumstances, we find that the unit as alleged in the complaint is an appropriate unit.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to abide by and adhere to our collective-bargaining agreement with the Union by unilaterally ceasing to make contractually required contributions to various funds, including but not limited to, a pension fund and a health and welfare fund, and by failing to deduct and remit union dues to the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole unit employees for any loss of benefits, including making required contributions to contractual funds in the manner required by the Decision and Order of the National Labor Relations Board.

WE WILL remit to the Union dues owed for those unit employees who have authorized us to deduct and remit them to the Union pursuant to the parties' collective-bargaining agreement.

UNITED RIGGING & HAULING, INC.